

REMARKS

Claims 1 – 21 and 39 are currently pending in the application. Claims 1, 4, 6 – 12, 14, 15 and 39 are amended. No new matter has been added, support being found throughout the specification and claims as filed.

Applicants point out specifically that support for the amendment to claim 1 may be found, for example in paragraphs [[0059]] and [[0062]] and claims as originally filed.

Applicants would like to thank the Examiner for her thoughtful consideration of the application and for her suggestions in a telephone interview on May 1, 2007 with Applicants' counsel.

Claim Objections

Claims 6 – 11 have been amended to refer to SEQ ID NOs as suggested by the Examiner. Accordingly, Applicants request the withdrawal of the objection.

Claim Rejections- 35 U.S.C. § 112, second paragraph

The Examiner has maintained the prior rejection of claims 1 – 21 and 39 under 35 U.S.C. § 112, second paragraph. Applicants traverse the rejection. Without acquiescing and merely to further prosecution of the application, Applicants have amended the claims in light of the Examiners comments in the telephone interview to refer to “a target nucleotide sequence of interest and to a nucleotide sequence not of interest.” Also as suggested by the Examiner, the hybridization conditions have been incorporated into the claim as well as a clause expressing that “the detection of fluorophore of Probe A is an indication of the presence of target sequence of interest.”

Applicants believe that the amendments to the claims obviate the rejections of claims for reciting: “the target sequence” as well as “binding site” (claims 12 and 13), “the opposite end” (claim 14), “the two PNA probes” (claim 15), and “wherein the hybridization of probe B increases the specificity...” (claim 39).

Accordingly, Applicants respectfully request the withdrawal of the rejections and allowance of the claims.

Claim Rejections- 35 U.S.C. § 102(b)

Claims 1, 5, 12, 16, 21 and 39 stand rejected under 35 U.S.C. 102(b) as being unpatentable over Schultz et al (Clinical Chemistry. 2000. 46:1728-1737). Applicants respectfully traverse the rejection.

The Schultz et al reference does not teach each and every element of the claims, including “hybridizing Probe A and Probe B to the sample … wherein: i) Probe A comprises a nucleotide sequence, which hybridizes to both a target nucleotide sequence of interest and to a nucleotide sequence not of interest and is labeled with a first-fluorophore; and ii) Probe B comprises a nucleotide sequence which hybridizes to a nucleotide sequence not of interest adjacent to the hybridization of Probe A and is labeled with a quencher.” Thus, the Schultz et al reference cannot anticipate the claims. Accordingly, Applicants request withdrawal of the rejection and allowance of the claims.

Claim Rejections- 35 U.S.C. § 103(a)

Claim 2 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Schultz et al in view of Ishibashi (US 6,872,525; the ‘525 reference). Applicants respectfully traverse the rejection.

As discussed above, Schultz et al does not teach or suggest “hybridizing Probe A and Probe B to the sample … wherein: i) Probe A comprises a nucleotide sequence, which hybridizes to both a target nucleotide sequence of interest and to a nucleotide sequence not of interest and is labeled with a first-fluorophore; and ii) Probe B comprises a nucleotide sequence which hybridizes to a nucleotide sequence not of interest adjacent to the hybridization of Probe A and is labeled with a quencher,” and the ‘525 reference does not cure this defect. Thus, neither Schultz et al nor the ‘387 patent, alone or in combination, teach or suggests a method of the current claims.

Applicants respectfully request withdrawal of the rejection and allowance of the claims.

Claims 3-4 and 15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schultz et al in view of Nikiforov (US 6,777,184; the ‘184 reference). Applicants respectfully traverse the rejection.

As discussed above, Schultz et al does not teach or suggest “hybridizing Probe A and Probe B to the sample … wherein: i) Probe A comprises a nucleotide sequence, which hybridizes to both a target nucleotide sequence of interest and to a nucleotide sequence not of interest and is labeled with a first-fluorophore; and ii) Probe B comprises a nucleotide sequence which hybridizes to a nucleotide sequence not of interest adjacent to the hybridization of Probe A and is labeled with a quencher,” and the ‘184 reference does not cure this defect. Thus, neither Schultz et al nor the ‘184 patent, alone or in combination, teach or suggests a method of the current claims.

Applicants respectfully request withdrawal of the rejection and allowance of the claims.

Claims 5– 11 and 19 – 20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the Schultz et al in view of Oliveira et al (Journal of Clinical Microbiology, 2002, Vol. 40, N0. 1, pages 247-251) and Hogan et al (WO0066788). Applicants respectfully traverse the rejection.

The combination of Schultz Oliveria et al and Hogan do not make the subject matter of the instant claims obvious because neither alone or in combination do the references teach or suggest “hybridizing Probe A and Probe B to the sample … wherein: i) Probe A comprises a nucleotide sequence, which hybridizes to both a target nucleotide sequence of interest and to a nucleotide sequence not of interest and is labeled with a first-fluorophore; and ii) Probe B comprises a nucleotide sequence which hybridizes to a nucleotide sequence not of interest adjacent to the hybridization of Probe A and is labeled with a quencher.” Thus, the claims are novel over this combination of references and accordingly, Applicants request withdrawal of the rejection and allowance of the claims.

In view of the above amendment, Applicants believe the pending application is in condition for allowance.

The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105, under Order No. 58576(48497).

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Respectfully submitted,

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